Attorney Docket No: 20341/67618
PATENT

AF/#
3636

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	James M. KAIN		
Serial No.:	09/871,199	Art Unit:	3636
Filed:	May 31, 2001	Examiner:	Joseph F. Edell
For:	JUVENILE SEAT ARMREST		

APPEAL BRIEF

Honorable Assistant Commissioner
for Patents
Washington, D.C. 20231

Sir:

Transmitted herewith for filing is an Appeal Brief:

Enclosed are:

Appeal Brief including (1 original and 3 copies);

A check for the filing fee in the amount of $320.00 is enclosed. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 10-0435 (20341/67618).

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341/67618).

Respectfully requested,

BARNES & THORNBURG

Mark M. Newman
Reg. No. 31,472
(202) 289-1313

03/14/2003 MMOHAMM1 00000011 09871199
01 FC:1402 320.00 OP

DCDS01 MMN 67870v1

Attorney Docket No: 20341/67618
PATENT

#15
M.D.
3/20/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	James M. KAIN		
Serial No.:	09/871,199	Art Unit:	3636
Filed:	May 31, 2001	Examiner:	Joseph F. Edell
For:	JUVENILE SEAT ARMREST		

APPEAL BRIEF

Honorable Assistant Commissioner for
Patents and Trademarks
Washington, D.C. 20231

Sir:

A Final Rejection of all Claims 1-31, was issued October 8, 2002. A telephonic interview occurred December 3, 2002 and a personal interview was conducted on January 6, 2003. A Request for Reconsideration was filed January 7, 2003 and an Advisory Office Action was issued January 23, 2003. A Notice of Appeal and Petition for Extension of Time were filed in the U.S. Patent and Trademark Office, on February 4, 2003.

1) Real Party in Interest:

This Application has been assigned to Cosco Management, Inc., a Delaware corporation and a subsidiary of Dorel Juvenile Group, a corporation of Massachusetts.

2) Related Appeals and Interferences:

Applicants know of no related appeals on interference.

3) Status of Claims:

The Application contains Claims 1-31.

Claims 1, 6-8, 10, 12 and 25 stand rejected as being anticipated by Muoio (U.S. Patent No. 2,792,054) under 35 U.S.C. §102(b).

Claims 2-3, 9, 11 and 27-29 stand rejected as being unpatentable over Muoio ('054) in view of Coutts (U.S. Patent No. 3,297,358) under 35 U.S.C. §103(a).

Claims 4-5, 30 and 31 stand rejected as being unpatentable over Muoio ('054) in view of Coutts (U.S. Patent No. 3,297,358) under 35 U.S.C. §103(a).

Claims 13-24 and 26 stand rejected as being unpatentable over Muoio ('054) in view of Coutts ('358) and in further view of Walker (U.S. Patent No. 3,279,848), under 35 U.S.C. §103(a).

4) Status of Amendments

An Amendment After Final Rejection was filed January 7, 2003 and was entered by way of the January 23, 2003, Office Action. Entry of the Amendment overcame the Final Rejection of Claims 1-5 under 35 U.S.C. §112.

5) Summary of the Invention

The invention relates to a Juvenile Vehicle Seat Assembly comprising a seat bottom 24 (see Figure 1) and a seat back 14. A cantilevered armrest 10 projects from outer ridges 16 and 18 of the seat back 14 and is bolted thereto by two bolt assemblies 88 and 89, (as shown in Figure 2). As can be seen in Figure 1, the seat ridges 16 and 18 project forwardly, and are somewhat rounded in cross-section facing the front to permit upper and lower wings 77 and 78 (see Figure 2) of the cantilevered armrest 10 to wrap around these edges, (as shown in Figure 4). The first fastener 88 is located at a position above the top surface 62 of the arm 10 and the second fastener 89 is located below the top edge surface 62 of the arm 10. The upper and lower wings 77 and 78 of the arm 10, define a support mount 12 for the cantilevered arm 10. The arm 10 has the shape of an inverted U, and has two inner panels 65 (see Figure 3), towards its outer free end 66 and an inner load support panel 67 which blocks movement of the arm 10 about pivot axis 85 of the upper fastener 88.

It can be thus seen that Applicant has provided a cantilevered arm 10, which has a free end 66 and which arm projects from a seat back and is supported at only one end to the seat back by fasteners 88 and 89.

6) Issues on Appeal

Whether Claims 1, 6-8, 10, 12 and 25 are anticipated by Muoio, U.S. Patent No. 2,792,054, under 35 U.S.C. §102(b).

Whether Claims 2-3, 9, 11 and 27-29 would be obvious over Muoio ('054) in view of Coutts, U.S. Patent No. 3,297,358, under 35 U.S.C. §103(a).

Whether Claims 4-5, 30 and 31 would be obvious over Muoio ('054) in view of Coutts, U.S. Patent No. 3,297,358, under 35 U.S.C. §103(a).

Whether Claims 13-24 and 26 would be obvious as unpatentable over Muoio ('054) in view of Coutts ('358) and in further view of Walker, U.S. Patent No. 3,279,848, under 35 U.S.C. §103(a).

7) Grouping of Claims

The Examiner's Grouping of the Claims is correct except that Claim 2 should be grouped separately from the rejection of Claims 2-3, 9, 11 and 27-29, since Claims 3, 9, 11 and 27-29 require the second fastener to be below the arm, whereas Claim 2 only requires it to be below the first fastener. Also Claims 13-14, 17 and 26 should be grouped differently from Claims 15-16 and 18-24, since these claims require the load support panel to be in a fixed position relative to the arm whereas Claims 15-16 and 18-24 do not.

8) Copy of the Claims

A copy of the Claims on appeal appear in the attached Appendix.

9) Argument

The patent to Muoio ('054) shows "a U-shaped seat support rod 28 with a right angle bend 29 in each side leg thereof..." (col. 2, lines 4-6), and also requires that the U-shaped seat support extend underneath the seat and is attached thereto by the side flanges 52 which have a plurality of notches 53 near the forward end thereof to receive the U-shaped seat support rod 28 therein (col. 2, lines 52-56). It is thus clear that Muoio ('054) does not provide for a cantilevered arm rest projecting from the back seat, with the cantilevered arm rest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position. In this regard, the honorable Board's attention is addressed to the dictionary definition of "cantilever", which was discussed at the interview's held with the Examiner, and which is appended to the Amendment filed January 7, 2003, which states that "Cantilever: A projecting beam or member supported at only one end". First, Muoio's arm structure 28 has but two ends: one at 30 (on the left side of the frame) and one at 30 (on the right side of the frame); thus, it has no free end, as claimed. Further, having both ends supported, it is not a cantilevered beam. The claims reference a cantilevered arm and reference a free end. In Muoio there is no free end. Further, the slots 53 act as a support, and thus, not only does Muoio not

have a free end, its arm is also supported at its mid-section at the point that goes under the seat by the slots 53 as well as at both arm ends. It is quite clear that the Examiner is completely in error when he states that Muoio provides for a cantilevered arm, as is referenced in each of the independent claims in this case. A cantilevered arm must be supported at only one end. It must have a free end that projects from the support. Under no circumstances could one ever glean a cantilevered arm in Muoio. As the Examiner is relying on Muoio for the cantilevered arm feature of all the claims and since the Examiner's position is completely wrong, as concerns what a cantilevered arm is, this honorable Board can resolve all the issues in the case by clearly indicating to the Examiner that Muoio does not have the cantilevered arm and the Board need not consider any of the following arguments presented hereinafter.

In view of the above, the rejections of Claims 1, 6-8, 10, 12 and 25 as being anticipated by Muoio ('054) under 35 U.S.C. §102(b), is clearly in error, and should be summarily reversed.

As concerns the rejection of Claims 2-3, 9, 11 and 27-29, the Examiner also relies on the teaching of Coutts ('358) for showing a lower wing with a second fastener (Figure 3), and proffers that it would be obvious to use a lower wing with a second fastener on Muoio. It is true that Coutts ('358) shows two fasteners to mount his U-shaped arm rest to the back (note also that, again, the U-shaped arm rest 25 of Coutts ('358) is not a cantilevered arm, as it has no free end and is not mounted solely at one end and projecting therefrom). As indicated *supra*, under Grouping of Claims, all of the Claims 3, 9, 11 and 27-29 require that the second support be below the arm. Claim 2 does not so require. As concerns the other Claims 3, 9, 11 and 27-29, Coutts ('358) does not provide a teaching for the second fastener to be below the arm, and hence, reversal of this rejection as concerns Claims 3, 9, 11 and 27-29 is proper, since there is no teaching to place the second support below the arm and, since the prior art reference to Muoio does not provide for the claimed cantilevered arm, as pointed out above. A placement of the second support is only taught by Applicant and use of Applicant's teaching to support an obviousness rejection is but an impermissible "hindsight" rejection, which cannot be affirmed.

Claims 4-5 and 30-31 were also rejected as being unpatentable over Muoio ('054) and Coutts ('358). The Examiner maintains that the particular type of fastener as claimed in these claims would involve a mere change in fastener type and that a change in length and fastener types is generally recognized as being within the level of ordinary skill in the art. In Claim 4, the limitations regarding fastener length is more than just "short" or "long", it is a relative length between two fasteners, a feature which the Examiner has not shown to be obvious skilled in the art (note, the same limitation appears in Claim 31). It is only the Applicant that teaches the

desirability to have one fastener longer than the other. Further, to apply such a teaching to the disclosure of Coutts ('358) or Muoio ('054) would not be realistic, since there is no widening of a support area that would occasion a longer fastener. It is only because of the widened area of securement that the difference in fastener lengths is necessary. Accordingly, since Muoio ('054) does not provide for the cantilevered arm rest, as explained *supra* and, since the differences in lengths of the fasteners in Claims 4 and 31 is but a "hindsight" choice made by the Examiner after viewing Applicant's disclosure, reversal of this rejection is required.

The Examiner has rejected Claims 13-24 and 26 as being unpatentable over Muoio ('054) in view of Coutts ('358), for substantially the same reasons as applied to Claims 2-3, 9, 11 and 27-29 in further view of Walker (3,279,848). Walker was applied to show "a load support panel 49 (Figure 1) to block pivotable movement of the arm rest". Walker ('848) shows the pair of oppositely spaced supports 49 to be "affixed to the periphery of the back rest 13..." (col. 2, lines 21-27). Claims 13-14, 17 and 26 all recite that "the load support panel is arranged to lie in a fixed position relative to the arm". In Walker ('848), the arm can move relative to the support panel and, therefore, there is no teaching to provide the anti-rotation force element on the arm in a fixed manner, as claimed. For this reason and for the reason expressed above that Muoio does not provide for the claimed cantilevered arm, this honorable Board should reverse this Rejection.

SUMMARY

Since the applied prior art does not provide for the claimed cantilevered arm, the Examiner's rejection is improper and should be summarily reversed by the Board and such is promptly requested.

Respectfully submitted,

BARNES & THORNBURG

Mark M. Newman
Reg. No. 31,472
(202) 289-1313

Attachments:
Appeal Brief Transmittal
Appendix

CLAIMS ON APPEAL

1. (Twice Amended) A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back,

a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and

a first fastener coupled to the support mount and seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position.

2. (Original) The assembly of claim 1, further comprising a second fastener coupled to the support mount and seat back and arranged to lie between the first fastener and the seat bottom.

3. (Original) The assembly of claim 2, wherein the arm includes a top surface adapted to support a forearm of an occupant of the seat and a lower edge positioned to lie below the top surface and in spaced-apart relation to the seat and the second fastener is arranged to lie below the lower edge and above the seat bottom.

4. (Original) The assembly of claim 2, wherein the first fastener has a first length and the second fastener has a second length longer than the first length.

5. (Original) The assembly of claim 2, wherein each fastener includes a barrel having a first end and an opposite threaded opened end, an enlarged head coupled to the first end, and a screw threaded to fit in and mate with the threaded opened end of the barrel to couple the support mount to the seat back.

6. (Amended) A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back,

a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position,

a first fastener coupled to the support mount and seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the arm to cause the arm to lie between the first fastener and the seat bottom, and

wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges.

7. (Original) The assembly of claim 6, wherein each flange is formed to include an upper wing rising above the arm and away from the seat bottom and the first fastener is coupled to the upper wing of each flange.

8. (Original) The assembly of claim 7, wherein the ridge of the seat back received in the U-shaped channel is formed to include a fastener aperture, each upper wing is formed to include a fastener aperture, and the first fastener is arranged to extend through the fastener apertures formed in the ridge of the seat back and each upper wing.

9. (Original) The assembly of claim 7, wherein each flange is formed to include a lower wing extending below the arm and toward the seat bottom and the second fastener is coupled to the lower wing of each flange.

10. (Original) The assembly of claim 1, wherein the support mount includes a flange coupled to the arm and formed to include an upper wing rising above the arm and away from the seat bottom and the first fastener is coupled to the upper wing.

11. (Original) The assembly of claim 10, wherein the flange is formed to include a lower wing extending below the arm and toward the seat bottom and the second fastener is coupled to the lower wing.

12. (Original) The assembly of claim 10, wherein the upper wing is formed to include a fastener aperture, a ridge of the seat back positioned to lie adjacent to the upper wing is formed to include a fastener aperture, and the first fastener is arranged to extend through the fastener apertures formed in the ridge of the seat back and the upper wing of the flange of the support mount.

13. (Original) The assembly of claim 1, wherein the cantilevered armrest further includes a load support panel arranged to lie in a fixed position relative to the arm and the support mount and to engage a ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener.

14. (Original) The assembly of claim 13, wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges and the load support panel includes a lower edge positioned to engage the ridge of the seat back and lie in a position between the inner and outer flanges of the support mount.

15. (Twice Amended) A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back having a side ridge facing forwardly toward the seat bottom,

a cantilevered armrest including a rearwardly facing support mount, an arm having a free end and a top surface, the support mount being appended to the arm and extending above the top surface of the arm for receiving the forwardly facing side ridge of the seat back therein, and a load support panel arranged to abut the seat back to block pivotable movement of the cantilevered arm relative to the seat back, and

a retainer coupled to a portion of the support mount and the seat back to maintain the arm in a cantilevered position.

16. (Amended) The assembly of claim 15, wherein the support mount includes an inner flange and an outer flange positioned to lie in a spaced-apart relation to the inner flange and both inner and outer flanges are positioned to lie against the side ridge.

17. (Amended) The assembly of claim 15, wherein the load support panel is arranged to lie in a fixed position relative to the arm and the support mount and to abut the forwardly facing side ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by a first fastener of the retainer.

18. (Amended) The assembly of claim 16, wherein the side ridge of the seat back further includes inner and outer panels and the inner and outer flanges have upper wings, one upper wing is positioned to lie against a portion of the inner panel above the arm, and another upper wing is positioned to lie against a portion of the outer panel above the arm.

19. (Amended) The assembly of claim 18, wherein the retainer includes a first fastener and a second fastener, and the first fastener couples the upper wings to the inner panel and the outer panel of the side ridge at the position above the arm.

20. (Original) The assembly of claim 16, wherein the inner and outer flanges includes lower wings, one lower wing is positioned to lie against a portion of the inner panel below the arm, and another lower wing is positioned to lie against the outer panel below the arm.

21. (Original) The assembly of claim 15, wherein the retainer includes a first fastener which couples the support mount to the seat back above the arm.

22. (Original) The assembly of claim 15, wherein the retainer includes a second fastener which couples the support mount to the seat back below the arm.

23. (Original) The assembly of claim 15, wherein the support mount is formed to include a U-shaped channel which is positioned to lie above the arm.

24. (Original) The assembly of claim 23, wherein the U-shaped channel mates with the side edge above the arm.

25. (Twice Amended) A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back having a side edge facing forwardly toward the seat bottom,

a cantilevered armrest including a free end, a top surface and support mount formed to include a rearwardly facing U-shaped channel receiving the forwardly facing side edge of the seat back therein and an arm appended to the support mount, and

means for fastening the support mount to the seat back to support the arm in a cantilevered position, the fastening means including a first fastener positioned to lie above the top surface of the arm and a second fastener positioned to lie below the arm.

26. (Original) The assembly of claim 25, wherein the cantilevered armrest further includes a load support panel arranged to lie in a fixed position relative to the arm and the support mount and to abut the forwardly facing side edge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener.

27. (Twice Amended) A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back,

a cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm, the support mount including an upper wing rising above the top surface arm and away from the seat bottom and a lower wing extending below the top surface of arm and toward the seat bottom, and

means for fastening the support mount to the seat back to support the arm in a cantilevered position, the fastening means including a first fastener coupled to the upper wing and the seat back and a second fastener coupled to the lower wing and the seat back.

28. (Original) The assembly of claim 27, wherein the upper wing is formed to include a fastener aperture, the seat back is formed to include a fastener aperture, and the first fastener is arranged to extend through fastener apertures formed in the upper wing and seat back.

29. (Original) The assembly of claim 27, wherein the lower wing is formed to include a fastener aperture, the seat back is formed to include a second fastener aperture, and the second fastener is arranged to extend through the fastener aperture formed in the lower wing and the second fastener aperture formed in the seat back.

30. (Original) The assembly of claim 27, wherein each fastener includes a barrel having a first end and an opposite threaded opened end, an enlarged head coupled to the first end, and a screw threaded to fit in and mate with the threaded opened end of the barrel to couple the support mount to the seat back.

31. (Original) The assembly of claim 27, wherein the first fastener has a first length and the second fastener has a second length longer than the first length.